Contributions of Prof. Dr. *Ernst Eduard Hirsch* to the Law of Intellectual and Artistic Works in Türkiye

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I. Introduction

To better evaluate the modernization of copyrights in the world, it is appropriate to begin this article with an old question: "Do intellectual property rights hinder free access to information?"[1].

More precisely, is there public interest in the free use of any literature without seeking the author's permission, or in the free translation of foreign works? Should there be a limit to this? Or may such freedom hinder authors in the often time-consuming, complex, and exhausting production of new ideas and works of art and science, effecting a decline of intellectual and cultural life?

This debate was mainly resolved in favour of authors at the end of the 1880s with the adoption of some international regulations protecting copyrights (primarily the Berne Convention for the Protection of Literary and Artistic Works of 1886). However, not all countries in the world acceded to this Convention at the same time. Türkiye, for example, adopted a modern national law at the end of 1951 and only then joined the Berne Union. One of the most important figures behind the modernization process of Türkiye was Prof. Dr. Ernst E. Hirsch, who worked as a professor both in Istanbul and Ankara Law Faculties between 1933 and 1952 and drafted the new Turkish Law of Intellectual and Artistic Works No. 5846. The Law prepared by Hirsch established a fair balance between the rights of authors and public interest in Türkiye; it also restricted free access or translation of foreign works in accordance with the Berne Convention.

In this study, we have focused on the efforts of Hirsch, who made significant contributions to the modernization process. Although many general studies have been published about his impact on Turkish law, we specifically focus on his contributions to the Law of Intellectual and Artistic Works and copyright law. Thus, we aim to present his contributions in a more specific field, in a detailed and systematic manner. His contributions will be mainly explained under the headings of his academic books and articles, his influence on judicial decisions, and his role as a legislator/drafter.

The last part of the article also includes some explanations about the impact of Hirsch's works on the modernization of German copyright law.

[1] See *Geiger*, C.: Hindert Das Urheberrecht den freien Zugang zu Wissen? Für einen angemessenen Interessenausgleich im Urheberrecht (Do Intellectual Property Rights Hinder Free Access to Information? For a Fair Balance of Interests in Copyright Law), *in* Symposium Book on Intellectual Property Rights from Hirsch to Present (Editors: Oğuz, A./Güngör, G./Patoğlu E. M.), Ankara 2004, pp. 23-44.

II. Historical Background of the Modernization of Turkish Copyright Law

A- Ottoman's Copyright Law and Its Implementation in Türkiye Until 1952

In the last period of the Ottoman Empire, the Copyright Law was adopted on May 8, 1910[2]. Prior to this Law, there had been some sub-regulations since 1850, but the intellectual rights on literary and artistic works were protected for the first time at the code/law level in the Ottoman Empire in 1910[3]. However, it should be noted that this Law was not in accordance with the contemporary rules of its time[4]. Because in the same period, there were new initiatives in European countries for the international protection of copyrights. In particular, the Berne Convention for the Protection of Literary and Artistic Works—concluded on November 9, 1886 and entered into force on December 4, 1887—was an important example of this. It is understood that the establishment of the Berne Union was motivated by the need to solve the problems of copyright and translated works in the international arena[5]. To address these legal issues, besides the Berne Convention, there were also other international developments[6].

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[2] The original name of the Law was "Hakk-ı Telif Kanunu", and it was published with the Arabic alphabet in the official Ottoman Law Book, see Düstur, Tertib-i Sani, Vol. 2, p. 273 ff. The text of the Law is accessible at https://acikerisim.tbmm.gov.tr/items/8689f0ba-1c4e-44b5-a45e-5fa5a1467a1a.

[3] For the details of copyright legislation in the Ottoman period, see *Çakmak*, D.: Osmanlı Telif Hukuku ile İlgili Mevzuat (Legislation on Ottoman Copyright Law), Türkiyat Araştırmaları Dergisi 2007, Iss. 21, pp. 191–234; *Turan*, M.: Çağlar Boyu Düşünce Özgürlüğü: Türkiye'de ve Dünyada Telif Haklarının Tarihsel Gelişiminin Değerlendirilmesi (Freedom of Thought Throughout the Ages: Evaluation of Historical Progress of Copyright in Türkiye and the World), Türk Kütüphaneciliği Dergisi 2016, Vol. 30, Iss. 2, p. 206 ff.; see also in German language, *Topal*, C.: Die Umsetzung der InfoSoc-Richtlinie in Deutschland und in der Türkei, Universitätsverlag Göttingen 2014, p. 161 ff.

[4] For an analysis of the Law, see *Hirsch*, E.: Türkiye'de Tercüme Hakkının Veçhi Tekâmülü (The Evolution of the Right to Translation in Türkiye), İstanbul Üniversitesi Hukuk Fakültesi Dergisi 1939, Vol. V, pp. 61–62; *Teoman*, Ö.: Çeviri Hakkının Türkiye'deki Gelişimi (Development of the Right to Translation in Türkiye), *in* Otuz Yıl Ticaret Hukuku–Tüm Makalelerim–I, İstanbul 2000, p. 88 ff.

[5] For the history, legal background, aim, and development of the Berne Convention, see generally *Bogsch*, A.: The First Hundred Years of the Berne Convention for the Protection of Literary and Artistic Works, *in* The Berne Convention for the Protection of Literary and Artistic Works, WIPO Publication, Geneva 1986, p. 11 ff.; *Burger*, P.: The Berne Convention: Its History and Its Key Role in the Future, Journal of Law and Technology 1988, Vol. 3, Iss. 1, p. 1 ff.; *Ricketson*, S./*Ginsburg*, J.: International Copyright and Neighbouring Rights–The Berne Convention and Beyond, Volume I, 3rd Edition, New York 2022, p. 44 ff.; *Gökçek*, H. S.: Bern Sözleşmesi'nin Tarihsel Gelişimi, Sözleşme Korumasının İlkeleri ve Korunan Eserler ile Menfaatler (The Historical Development of the Berne Convention, The Principles of Protection, and Protected Works and Interests), Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi 2024, Vol. 26, Iss. 2, p. 1759 ff.

[6] Apart from the Berne Convention, there was another convention adopted internationally at a similar time. This other convention, called the Montevideo Convention, was preferred by the countries of the American continent. Later on, the Universal Copyright Convention was also adopted to bridge the

The Ottoman Empire, which was also invited to join the Berne Convention, refused to do so. Instead, citing its need for translated works from foreign languages, it adopted and implemented the above-mentioned Copyright Law, which accepted the right to translate free of charge[7].

Although the Ottoman Empire was later forced to join the Berne Convention by Article 272 of the Treaty of Sèvres in 1920, this Treaty was not recognized by Türkiye. The issue was postponed to the Lausanne negotiations and was discussed again in 1923 between the Turkish Grand National Assembly Government and the contracting countries. As a requirement of the Treaty of Lausanne in 1923, Türkiye undertook to become a party to the Berne Convention and agreed to establish a new legal order that protects works of literature and art in accordance with modern international law[8].

Indeed, the third part of the Treaty of Lausanne was on "Economic Clauses" and Article 14 of the Clauses states Türkiye's undertaking as follows[9]:

> "*Türkiye undertakes, within a period of twelve months from the coming into force of the present Convention:*
>
> *(1) To accede in the prescribed form to the International Convention of Paris of the 20th March, 1883, for the protection of industrial property, revised at Washington on the 2nd of June, 1911;*
>
> *(2) To accede also to the International Convention of Berne of the 9th September, 1886, for the protection of literary and artistic works, revised in Berlin on the 13th November, 1908, and the additional protocol of Berne of the 20th March, 1914, relating to the protection of literary and artistic works.*

gap between the Berne Union and the American Union. On this subject, see *Öztrak*, İ.: Fikir ve Sanat Eserleri Üzerindeki Hakların Korunması Yönünden Pozitif Hukuktaki Tarihi Gelişim (Historical Development in Positive Law in Terms of Protection of Rights on Intellectual and Artistic Works), Ankara Üniversitesi Siyasal Bilgiler Fakültesi Dergisi 1970, Vol. XXV, Iss. 3, p. 1 ff.

[7] The parliamentary speeches made during the discussion of the Copyright Law in the Ottoman parliamentary "Meclis-i Mebusan" show that the reason for the Ottoman Empire's reluctance to join the Berne Convention was its opposition to the payment of royalties for works translated from foreign languages into Turkish. For summaries of these parliamentary speeches, see *Beşiroğlu*, A.: Düşünce Ürünleri Üzerinde Haklar (Rights on Intellectual Property), Fikir Hukuku, Birinci Cilt–Temel Kurallar, 2nd Edition, Ankara 2002, p. 3 ff. See also *Hirsch*, Türkiye'de Tercüme Hakkının Veçhi Tekâmülü (The Evolution of the Right to Translation in Türkiye), p. 57.

[8] For details of the process and Lausanne negotiations on the Berne Convention, see also *Bektaş*, İ.: Türkiye'nin Bern Sözleşmesi'ne Katılması ve Fikir ve Sanat Eserleri Kanunu'nun Kabul Edilme Süreci (Türkiye's Accession to the Berne Convention and the Adoption Process of the Law on Intellectual and Artistic Works), Banka ve Ticaret Hukuku Dergisi 2024, Vol. 40, Iss. 2, p. 357 ff.; *Kurt*, K.: Bern Sözleşmesi ve Türkiye'nin Katılım Süreci (Berne Convention and Türkiye's Accession Process), Atatürk Araştırma Merkezi Dergisi 2021, Vol. 104, p. 17 ff.

[9] For translations and comparisons of the Treaty of Serves and Lausanne Treaty, see https://www.versailler-vertrag.de/sevres/index-lausanne.htm (Last Access Date: 04 January, 2025).

> *The other Powers signatory to the present Convention will raise no objection, while it remains in force, to the reserve which Türkiye proposes to make with regard to the provisions of the aforesaid Conventions and Protocol respecting the right of translation into the Turkish language, if the other Powers, co-signatories of those Conventions and Protocol, have not themselves raised any objection to the said reserve during the year following the coming into force of the present Convention.* [...]"

However, it took almost 30 years for Türkiye to become a party to this Convention and to adopt a modern law in accordance with the latter. Until 1952, Türkiye applied the old laws dating back to the Ottoman Empire. Thus, the 1910 Copyright Law had a distinctive feature as it was a valid law in Türkiye both during the Ottoman Empire and the republican era. This was an interesting exception in temporal application of laws for Türkiye. By continuing the old law from the Ottoman period, liberal translation rights—playing a vitally important role in the modernization process—remained secured. As in the last periods of the Ottoman Empire, the Government of the Grand National Assembly of Türkiye was of the same opinion that the translation of European literature and books into Turkish without any royalties was a temporary necessity for the cultural, literary, and scientific integration of the newly established country with weak economic power compared to Western Europe[10]. Türkiye argued that there was urgent need to translate foreign works into Turkish, not least in the interest of European countries, too, otherwise Türkiye's harmonization with Europe would be delayed. For this reason, Türkiye followed a policy of initially not acceding to the Berne Convention and eventually joining it but with a reservation regarding the translation of foreign works[11]. However, Türkiye's accession to the Convention could not be completed due to some of the state parties refusing to ratify the reservation[12].

B- Criticism of the Old Law and Adoption of the New One

When the Republic of Türkiye was founded in 1923, the Copyright Law of the Ottoman Empire (1910) was still in force. In fact, it continued to be applied in Türkiye

[10] See *Hirsch*, Türkiye'de Tercüme Hakkının Veçhi Tekâmülü (The Evolution of the Right to Translation in Türkiye), p. 58; *Ayiter*, N.: Hukukta Fikir ve San'at Ürünleri (Intellectual and Artistic Products in Law), Ankara 1972, p. 27–28; *Eskin*, Ş.: Türkiye'nin Bern Sözleşmesi'ne Katılım Sürecinde Telif Haklarını Koruma Cemiyeti ve Halide Edib Adıvar (The Society for the Protection of Copyrights and Halide Edib Adıvar in Türkiye's Accession Process to the Berne Convention), Amme İdaresi Dergisi 2022, Vol. 55, Iss. 3, p. 64.

[11] During the negotiations, Türkiye's demand for free translation was concretized by explaining the reservation to cover only translations into the "Turkish language" and by making it conditional on the ratification of this reservation by all other signatory states. Finally, on July 24, 1923, Article 14 of the Trade Convention, which was annexed to the Treaty of Lausanne, was concluded and Türkiye agreed to become a party to the Convention on these conditions. In other words, Türkiye agreed to join the Berne Union on the condition that its reservation was accepted by all states.

[12] See *Bektaş*, p. 363 ff.

for a long time—until 1952. One of the main reasons for the delay in amending a new law was the aforementioned issue of translation rights.

Intertwined with the general necessity of relatively free translation of foreign works in order to foster economic and cultural growth, the second reason for the delay lies in the political pressure exerted by Turkish publishing houses and newspapers, which were earning money by translating many works of authors who were foreigners. Fearing diminished incomes due to royalties, they firmly rejected more restrictive translation rights. During this period of freedom, it is understood that some strange "thefts" (according to Hirsch), such as a work originally written in Turkish being published under the name of a famous foreign author as if it were a translation, were encountered[13]. Years later, when Hirsch was drafting the new law, he stated his opinion on this topic as follows[14]:

> "*Many respected writers and scientists agreed with my thesis* [...] *that Turkish society could achieve the goal of reaching the level of modern civilization indicated by Atatürk only if* [...] *'thefts in the field of intellectual property' were prohibited by law, or at least made possible in a very limited way.*"

Upon the increase in such problems, some contemporary writers and intellectuals advocating the need for a new and strong copyright law founded a society in Türkiye named The Society for the Protection of Copyrights (Telif Haklarını Koruma Cemiyeti) in 1948. The members of this Society criticized the existing rules tolerating some—in their view unethical—exploitation of the labor of local and foreign authors. They also stated that the Copyright Law of 1910 was incompatible with the Berne Convention in various aspects, such as

- the shorter period of protection granted to the author,
- the missing protection of translations of foreign works,
- the lack of provisions on the moral rights of authors[15],
- the mandatory registration of the work for protection (censorship), and
- outdated fines calculated not in cash but in gold, as in the Ottoman period.

With the help of the intensive political and social activities and criticism of the Society for the Protection of Copyrights between 1948 and 1951, the process finally resulted in the adoption of the new law[16]. Thus, the modernization process was completed with the Law on Intellectual and Artistic Works No. 5846, which was

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[13] For details of such examples, see *Eskin*, p. 63 ff.

[14] See *Hirsch*, E.: Hâtıralarım, Kayzer Dönemi–Weimar Cumhuriyeti–Atatürk Ülkesi (My Memories, Kaiser Era–Weimar Republic–Atatürk's Country), Ankara 1985, p. 433. All English quotations in the article have been translated from Turkish by the author.

[15] For the historical development of the moral rights of authors in Turkish copyright law, see *Yılmaztekin*, H. K./*Yalçın*, B. E.: Manevi Hakların Türk Telif Hukukundaki Tarihî Gelişimi (Historical Development of Moral Rights in Turkish Copyright Law), Selçuk Üniversitesi Hukuk Fakültesi Dergisi 2021, Vol. 29, Iss. 3, pp. 1813–1866.

[16] For the political and intellectual activities of the Society in Türkiye, see *Eskin*, p. 59 ff.

accepted on November 5, 1951 and entered into force on January 1, 1952[17]. The Turkish Grand National Assembly adopted another Law No. 5777, which authorized the government to make Türkiye a party to the Berne Convention, in 1951[18]. Consequently, Türkiye became the 42nd country to accede to the Berne Union in 1952[19], which currently has 181 members[20].

While all these events were taking place, the efforts of Prof. Dr. Ernst E. Hirsch played an important role in the preparation of this new law and in the development of copyrights in Türkiye. In the following pages, his contributions will be analysed under sub-topics. Firstly, the impact of his academic works and secondly, his active role in the preparation of the new Law as a drafter will be explained.

III. Prof. Dr. Ernst Hirsch's Contributions to the Modernization of Turkish Law of Intellectual and Artistic Works

A- The Importance of Hirsch's Academic Works in the Adoption Process of the New Law

Prof. Dr. Ernst E. Hirsch published 60 books, 158 Articles, and 66 book reviews in his life, of which 85 (28 books and 57 articles) were written in Turkish[21]. Some of his publications in German language also address the Turkish law; therefore, more than half of all his written work relates to Turkish law[22]. His studies cover many areas of law, including commercial law, law of legal philosophy and sociology, intellectual property law, and constitutional law. Among all these works, he authored 40 academic works particularly in the field of intellectual property and copyright law (20 books or articles and 20 book reviews). In this field of law, his prominent works published between 1939 and 1950 in Turkish are inter alia the following:

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[17] Published in the Official Journal of Türkiye, Date: 13.12.1951, Number: 7981. For a brief evaluation of the Law in German language, see *Gökyayla*, E.: Das türkische Urheberrechtsgesetz, Abs. 1–39, Internet Zeitschrift für Rechtsinformatik und Informationsrecht, 228/2003, DOI: https://doi.org/10.7328/jurpcb/20031810269.

[18] Published in the Official Journal of Türkiye, Date: 02.06.1951, Number: 7824.

[19] *Arpad*, p. 32.

[20] https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=C&treaty_id=15 (Last Access Date: 21 January, 2025).

[21] For his publication list, see *Şenocak*, K.: Hukuk Fakültesi'ne Alman Bilim İnsanlarının Katkıları, Prof. Dr. Ernst Eduard Hirsch (Contributions of German Scientists to the Faculty of Law, Prof. Dr. Ernst Eduard Hirsch), *in* İkinci Vatan ve Ankara Üniversitesi (1933–1970), Editör Prof. Dr. Kasım Karakütük, Ankara Üniversitesi Yayınları 2016, p. 180 ff.

[22] According to a study, approximately 65% of all his books and articles in Turkish and German examine the topics related to Turkish law. See *Karayalçın*, Y.: Prof. Dr. Ernst Hirş: Kişiliği–Türk Hukuku (Prof. Dr. Ernst Hirsch: His Personality and Contributions to Turkish Law), *in* Prof. Dr. Yaşar Karayalçın'ın Üniversite ve Hukuk Hayatımızla İlgili Yayımlanmış 37 Makalesi, Özgeçmisi, Kitapları (1–77) ve Kısa Makaleleri (1–135), Ankara 2012, s. 998; *Şenocak*, p. 175.

1. The article "The Creation of the Right of Translation in Türkiye", 1939, Istanbul[23]—this article was written based on Hirsch's opening lecture[24] at Istanbul University Faculty of Law in 1939—,
2. The article "Analysis of the Copyright Law in Force in Our Country", 1940, Istanbul[25],
3. The article "Law Project on Intellectual Works", 1941, Istanbul[26],
4. The two-volume book titled "Intellectual Labour from a Legal Perspective" 1942–1943, Istanbul[27],
5. The article "A New View on the Nature of Copyright Intellectual and Industrial Rights", 1944, Ankara[28],
6. The book "Intellectual and Industrial Rights", 1948, Ankara[29],
7. The article "Berne Convention", 1950, Ankara[30].

These seven works in particular exerted notable influence on the new law project of Türkiye, conducted from 1939 to 1952.

In the preface of his two-volume book titled "The Concept of Intellectual Labour from a Legal Perspective" (Hukuki Bakımdan Fikri Say), 1942, Prof. Hirsch underlines why he gave importance to the intellectual property law, and he explains why Türkiye (and also Germany) needs a modernization in this area, as follows[31]:

> "*It should not be forgotten that the forces that will play the most important role in the development of industry and raise the technical level of a country are the intellectual-productive forces in that country. I can explain the secret of the great success of the American*

[23] The original name of the article is "Türkiye'de Tercüme Hakkının Veçhi Tekâmülü" and it was published in the Journal of Istanbul University Law Faculty, 1939, Vol. 5, pp. 46–62.

[24] There is a tradition in the law faculties of Istanbul and Ankara Universities where an opening lecture is given by a professor to all students of the faculties on the first day of the fall semester. This tradition is still upheld and continues to this day.

[25] The original name of this article is "Memleketimizde Mer'i Olan Telif Hakkı Kanununun Tahlili" and it was published in the Journal of Istanbul University Law Faculty, 1940, Vol. 6, pp. 346–500. As stated on the first page of that article, Hirsch wrote this article in English at first and sent it to be published in the "World Copyright Encyclopedia" in the Netherlands. At the same time, the article was translated into Turkish by Dr. Orhan Münir Çağıl. However, the original article was published later than the translated one because of World War II and post-war publishing issues in the Netherlands. See *Hirsch*, E.: Turkish Copyright, *in* World Copyright, An Encyclopedia (Editors: Pinner, H. L./Dienstag, P. M.), Leyden 1953.

[26] The original name of the article is "Fikrî Eserler Hakkında Kanun Projesi" and it was published in the Journal of Istanbul University Law Faculty, 1940, Vol. 7, Iss. 2–3, pp. 429–504.

[27] The original name of the book is "Hukuki Bakımdan Fikri Say" and it was published by Istanbul University as two different volumes in 1942 and 1943.

[28] The original name of the article is "Eser Sahipliği Fikri ve Sinai Haklarin Mahiyeti Hakkinda Yeni Bir Görüş" and it was published in the Journal of Ankara University Law Faculty, 1944, Vol. 1, Iss. 3, pp. 330–342.

[29] The original name of the book is "Fikri ve Sınai Haklar" and it was published in Ankara in 1948.

[30] The original name of the article is "Bern Sözleşmesi" and it was published in the Journal of Ankara University Law Faculty, 1950, Vol. 7, pp. 130–145.

[31] Translation by the author.

> *industry at the Philadelphia International Exhibition by the fact that the American industry was protected by an excellent patent law. These words of a German jurist, who noted with pain that it was not a coincidence that the German Patent Law was created directly under the disgraceful fiasco suffered by the German industry at this exhibition, are a sign of the importance of intellectual forces and the legal rules that will ensure their protection.*
>
> [...] *Therefore, it is necessary to attach as much importance to intellectual labor as physical labor, perhaps more than physical labor, and to secure the status of intellectual workers by means of legal rules. In order to fulfil this purpose, a good patent law and a copyright law are needed. Our*[32] *current legislation in this field is outdated and preparations have been underway for several years for the enactment of new laws to meet new needs. By analysing the subject of intellectual property in the doctoral specialization course, I thought it would be useful to give the lawyers of tomorrow the opportunity to penetrate into the depths of this field.* [...] *This book is written not only for the doctoral student but also for every intellectual who wishes to broaden his general culture. (Hirsch, Istanbul Moda, March 1942).*"

Eight years after publishing this book, similar evaluations were made by Hirsch in the aforementioned Article "Berne Convention". While explaining his opinion on the Berne Convention, he stated that there is a need for modern regulations for the protection of intellectual and artistic works in every country, since it is a fundamental moral and legal necessity for those who wish to benefit economically from the labor of others to pay an appropriate remuneration to the laborers (authors) in return. Hirsch analysed current international regulations and pointed out the importance of accession to the Berne Convention, which had been a pending task for Türkiye since the 1923 Treaty of Lausanne. He also explained the roadmap for becoming a party to this Convention. The reservation of not recognizing the right to translation at all was contrary to Article 25 of the Convention, otherwise Türkiye's declaration of accession would be invalid; in fact, Türkiye's previous declarations of accession that included this condition had not been accepted before[33]. The first solution Hirsch offered was the replacement of the Ottoman Copyright Law of 1910 with a modern one[34]:

> "*It is an incontrovertible fact that the legal protection granted to authors in our country today is not even in the extent and scope of the Rome version of the Berne Convention, let alone the Brussels version. Therefore, Türkiye may, at its option, join either the Convention concluded in Rome or to the Brussels text before 1 July 1951. After July 1, 1951, however, it is only possible to enter the Union through accession to the Convention concluded in Brussels. For this purpose, before the declaration of accession, a new law in conformity with the Berne Convention must be accepted to replace the Ottoman Copyright Law of 1910.*"

[32] Hirsch's frequent use of the term "our country" for Türkiye in his works points to a sense of belonging, we believe.
[33] *Hirsch*, Bern Sözleşmesi (Berne Convention), pp. 132, 138.
[34] Translation by the author.

According to Hirsch, a new law in Türkiye was also a necessity in order to comply with Article 27 of the Universal Declaration of Human Rights which states that *"Everyone has the right to the protection of the moral and material interests arising from any work of science, literature or art of which he is the author"*[35]. It is noteworthy that the justification of the new Law No. 5777, which entered into force almost one year after this article and authorizes the Turkish government to accede to the Berne Union, includes sentences similar to those in Hirsch's article. This connection shows the effects of his previous publications and ideas on the modernization. The related part of the justification of the Law can be translated as follows[36]:

> "*Since Article 27 of the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in its resolution 217 (III) dated 10.XII.1948: 'Everyone has the right to the protection of the moral and material interests arising from any work of science, literature or art of which he is the author', it has become necessary for our country to join the Berne Union, of which almost all European states are members.*"

Prof. Hirsch continued to write academic articles in the field of intellectual property rights even after the adoption of the new Law in Türkiye. In this way, he continued to provide guidance on how the articles of the Law could be interpreted in accordance with international law. Even years after his return to Germany, he followed the new developments in Turkish law and published his views on the recent issues. His publications such as "Darstellung und Übersetzung des türkischen Gesetzes über Geisteswerke und Kunstwerke in Quellen des Urheberrechts"[37] in 1961 and "Die Reform des türkischen Urheberrechtsgesetzes", published in Germany just a year before his death in 1984, are important examples of this[38].

B- Hirsch's Active Role in the Drafting of the New Law

Following the First Turkish Publications Congress in 1939, the Turkish Ministry of National Education assigned a special commission[39], including Prof. Dr. Ernst E.

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[35] *Hirsch*, Bern Sözleşmesi (Berne Convention), p. 132 ff.

[36] For the justification of the Law No. 5777 authorizing the government to join the Berne Union, see https://www5.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d09/c007/tbmm09007080ss0160.pdf (Last Access Date: 11 January, 2025). All English quotations in the article have been translated from Turkish by the author.

[37] *Hirsch*, E.: Darstellung und Übersetzung des türkischen Gesetzes über Geisteswerke und Kunstwerke (Presentation and Translation of the Turkish Law on Intellectual and Artistic Works), *in* Quellen des Urheberrechts, Gesetzestexte aller Länder mit deutschen Übersetzungen, Bd. II (Editors: Möhring, P./Schulze, E./Ulmer, E./Zweigert, K.), Frankfurt am Main 1961.

[38] *Hirsch*, E.: Die Reform des türkischen Urheberrechtsgesetzes (The Reform of the Turkish Law on Intellectual and Artistic Works), UFITA 98, Bern 1984, pp. 83–86.

[39] The Ministry of Education ordered that a commission of relevant professors and associate professors of the Faculty of Law be formed and a new and complete copyright law be drafted together with its justification. Under the chairmanship of Dean Prof. Dr. Ali Fuat Başgil, the other members were professors Ebül'ulâ Mardin, Andreas B. Schwarz, Ch. Crozat, Ernst E. Hirsch, and associate profes-

Hirsch, with the task of preparing a new law that should solve the copyrights problem in Türkiye. The commission gave the main responsibility to Hirsch[40] and he completed the draft and submitted it to the Ministry in 1941. This draft was also published as the aforementioned article "Law Project on Intellectual Works" in 1941.

According to Hirsch's memories[41], "the first draft was forgotten in the desk drawers" because of the social and political reasons as explained at the beginning of this article. However, in 1948, Hirsch was individually assigned again to work on the same subject. One of the Turkish national newspapers (Son Posta) explored the recent developments in 1948 in a small column which can be translated as follows[42]:

> "*Draft Copyright Law is being prepared - the draft Copyright Law prepared by the Ministry of Justice has been given to Professor Hirsch for his comments. Hirsch is working on the draft and making the necessary amendments by analyzing the legislation from all over the world.*"

In his autobiography, Hirsch explains the possible reason of his second assignment to renew the draft as follows[43]:

> "*This time, the request came not from the Ministry of National Education but from the Ministry of Justice. This request was probably prompted by an article by the world-famous Turkish female writer Halide Edip Adıvar, which appeared in Cumhuriyet on June 16, 1948. Mrs. Adıvar demanded a new law to protect copyright and limit the freedom to translate books from foreign languages. The then Minister of Justice, Fuat Sirmen, asked me* [...] *to review the preliminary draft once more. He also asked me to adapt this preliminary draft to the Berne Convention, which had meanwhile (1948) been revised in Brussels.*"

Halide Edip Adıvar (1884–1964), who Hirsch mentioned in the previous sentences, was not only a famous writer but also the founder of The Society for the Protection of Copyrights. Moreover, she was elected as a member of parliament in the 1950 general election. With this election in Türkiye, the 27-year rule of the Republican Party ended and a new government willing to accept a new law ruled. Presumably, merely the joint political power of Adıvar and the academic works of Hirsch together sufficed to accomplish the adoption of the new Law.

In fact, the legal modernization of Türkiye from 1926 onwards did not stem from the demands and efforts of the general public. Especially the legal moderni-

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sors Yavuz Abadan and Halil Arslanlı. According to Hirsch, the commission entrusted him with the drafting of a project to be used as a basis for negotiations. See *Hirsch*, Fikri Eserler Hakkında Kanun Projesi (Law Project on Intellectual Works), p. 429.

[40] *Hirsch*, Fikri Eserler Hakkında Kanun Projesi (Law Project on Intellectual Works), p. 429.

[41] *Hirsch*, Hâtıralarım (My Memories), p. 431.

[42] Son Posta Gazetesi (Newspaper of Son Posta), 13 June, 1948, p. 3; accessible at https://www.gastearsivi.com (Last Access Date: 04 January, 2025).

[43] *Hirsch*, Hâtıralarım (My Memories), p. 431.

zation of civil law did not originate from the society, but from the ruling elite[44]. Based on Hirsch's experiences in Türkiye, society is not the driver of legal development but rather political decisions "from above/top down" provide the impetus[45]. However, this observation might not pertain to the modernization of legal rules related to copyrights law. As the Turkish writers and intellectuals of the period strongly advocated for a modern copyright law by publishing articles, founding societies, and connecting with international organizations[46], the efforts to initiate the codification movement were, at least to a notable extent, "bottom-up".

As a result, the second draft prepared by Hirsch based on his previous draft was finally enacted in 1951 as the Law No. 5846 on Intellectual and Artistic Works in Türkiye. In the following years, decisions such as Türkiye's accedence to the new Paris Text amending the Berne Convention and becoming a party to the 1994 Agreement on Trade Related Aspects of Intellectual Property Rights were made due to these previous efforts.

One week before the adoption of the new Law, Halide Edip Adıvar made a speech on behalf of the National Education Commission at the parliamentary meeting of the Turkish Grand National Assembly. In her speech, she paid homage to Hirsch's contributions and asked the members of parliament to accept the Law with the following words—according to parliamentary records, her speech was greeted with applause[47]:

> "*On behalf of all the intellectuals and authors of the country, I would like to thank the drafters of this bill, which the National Education Commission has accepted with very few and insignificant amendments, especially Professor Hirsch, who has a great position in international law in this field, and Mr. Âmir, who is one of the representatives of the Ministry of Justice.* [...]
>
> *Now, dear friends, there are two aspects of this bill that seem to be separate from each other in its first form; I will talk about them. The first one is the issue of out-of-country works. In other words, it is a matter of recognizing the copyrights of foreign authors. The second is*

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[44] See *Akipek Öcal*, Ş./*Arslan*, A.: Overcoming the Non-Acceptance of Civil Marriages in Türkiye: The Biggest Problem of the Legal Reception of the Swiss Civil Code, European Review of Privat Law 2024, Vol. 32, Iss. 5, p. 920: *"Although the Turkish legal revolution did not originate from the grassroots of society, but from the ruling elite, the Turkish legislator ensured that the new law was embedded in the people through the above-mentioned legal instruments. In this way, the top-down legal revolution reached the grassroots.*"

[45] See *Arslan*, A.: Ernst Eduard Hirschs und Eugen Ehrlichs Konzepte des „lebenden Rechts" im Lichte der Rezeption westeuropäischen Rechts in der Türkei (Ernst Eduard Hirsch's and Eugen Ehrlich's Concepts of "Living Law" in Light of the Reception of Western European Law in Türkiye), Zeitschrift für neuere Rechtsgeschichte (ZNR) 2023, Year 45, Iss. 3/4, p. 234 ff.

[46] For the political and intellectual activities of the Society in Türkiye, see *Eskin*, p. 59 ff. See also the previous heading "II, B- Criticism of the Old Law and Adoption of the New One".

[47] Translation by the authors. For the original document see Turkish Great National Assembly (TBMM) Minutes Journal, 28 December 1951, Wednesday, Period: IX, Meeting: 2, Session: 10, p. 280; accessible at https://www5.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d09/c010/tbmm09010010.pdf (Last Access Date: 11 January, 2025).

> *the lack of clarity and inadequacy of the existing laws for the protection of the works of homegrown authors and artists, which is also a great blow to our intellectual development, and this issue was taken up again by this Law. The first one, the one that authorizes the government to implement the provisions of the Berne Convention, was passed by your Honorable Assembly some time ago. I would like to congratulate your Honorable Assembly for passing this Law, even if its effects are long term, as it is an important achievement in our intellectual and civilizational life.* […] *For this, I kindly request this* (the passage of the Law in parliament) *from all of you, representatives of the Turkish Nation, regardless of party or non-party affiliation.*"

Also, in the justification of the new Law, the necessity of a modern law of copyrights was mentioned. These sentences show the importance of Hirsch's efforts, especially on the Berne Convention, for Türkiye[48]:

> "*The old Copyright Law, which is a product of the Ottoman constitutional monarchy period and was drafted 40 years ago and has been in force since May 8, 1326 (1910), bears the traces both in scope and spirit of the time in which it was drafted.* […] *The old Copyright Law, which is very closely related to the intellectual and cultural life of the nation, although it more or less corresponds to the intellectual situation of the Ottoman Empire 40 years ago, or more precisely of Istanbul, which was the centre of intellectual movements at that time, does not correspond to today's national intellectual and cultural life and our modern legislation, which has emerged as a result of the cultural and legal revolutions of our country in the last 25 years.* […]
>
> *For these reasons, the idea that the amendment of the Copyright Law is a necessity has occupied those concerned for many years and found its clear expression in the Publication Congress convened in 1938. This draft Law, which is in accordance with the special needs of our country and the most modern foreign laws and international treaties, has been prepared by making use of both the work of the Congress and the scientific publications in this field in the last ten years.*"

Notably, the 1951 Law No. 5846 on Intellectual and Artistic Works was not the only law Prof. Hirsch drafted. He was also the drafter of the 1956 Turkish Commercial Code No. 6762[49] that was applied in Türkiye until 2011[50]. Hirsch had also participated in the preparatory work for the previous 1946 Law of Universities No.

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[48] Translation by the authors. For the original justification of the new Law No. 5846 see https://www5.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d09/c010/tbmm09010010ss0289.pdf (Last Access Date: 11 January, 2025).

[49] Published in the Official Journal of Türkiye, Date: 29.06.1956, Number: 9353.

[50] The fact that many articles of the latest Turkish Commercial Code (2011) No. 6102 were influenced by the previous Code (1956) prepared by Prof. Dr. Ernst Hirsch is a fundamental example of his contribution to the recent legislation. For a study on this subject, see *Tekin*, p. 55 ff.; *Şenocak*, p. 159 ff.

4936[51] and the 1965 Trademark Law No. 551[52]. In addition to these, he participated in the preparatory work of a new Patent Law which has never been enacted[53].

C- The Continuing Impact of Hirsch on the Implementation of the New Law in Turkish Courts

The influence of Hirsch's publications on Turkish law and doctrine is versatile and still ongoing[54]. A simple search through the official DergiPark system[55], Türkiye's academic journal database, reveals that even in 2024, Hirsch is cited in various legal fields such as copyright law, commercial law, philosophy of law, negotiable instruments law, insurance law and administrative law.

Hirsch's opinions are also cited in Turkish judicial decisions, and he guided the implementation of the Law, as exemplified under the next heading. All the following decisions of Turkish courts—mostly from the recent past in order to emphasise the impact of Hirsch's work even in today's legal practice—will be shared in an unofficial English translation.

1. Some References to Hirsch in Recent Judgments

The Court of Cassation—the highest level of civil jurisdiction in Türkiye—explained with reference to Hirsch that ideas remaining at the stage of thought cannot be considered as a work of art or intellectual work[56]:

> "[…] *the claimant is not yet the owner of a work of art. He has just thought of creating a work based on the scientific discoveries he obtained from the excavations he conducted. In other words, he has a thought or an idea in this direction. However, an intellectual thought cannot gain the status of a work of art as long as it remains an idea (Ord. Prof. E. Hirsch, Intellectual and Industrial Rights, 1948, pp. 6–10, 130* […]*) and therefore cannot benefit from the protective provisions of the Law on Intellectual and Artistic Works.*"

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[51] The Law was published in the Official Journal of Türkiye, Date: 10.06.1946, Number: 6336. For the effect of Hirsch see *Karayalçın*, p. 999.

[52] The Law was published in the Official Journal of Türkiye, Date: 12.03.1965, Number: 11951. For the effect of Hirsch see *Şenocak*, p. 172.

[53] See *Şenocak*, p. 172.

[54] Hirsch's contributions in Türkiye can be closer examined regarding many different aspects such as language, education, academic publication, modernization etc. For explanatory examples of how they affect Turkish law and Turkish doctrine, see *Krüger*, H.: Zum Gedenken Ernst E. Hirsch (1902-1985), Die Welt des Islams 1986, Vol. XXIV, Iss. 1/4, pp. 141-153; *Tekin*, U.: Ord. Prof. Ernst E. Hirsch'in Türk Ticaret Hukuku'nun Gelişimine Katkıları (Prof. Ernst E. Hirsch's Contributions to the Development of Turkish Commercial Law), *in* Eskişehir Osmangazi Üniversitesi'nin Cumhuriyetimizin 100. Yılına Armağanı (Editor: Hekimler, A.), İstanbul 2023, p. 55 ff.; *Şenocak*, p. 159 ff.

[55] See https://dergipark.org.tr.

[56] 4th Civil Chamber of the Court of Cassation, Date: 01.07.1977, Case No. 1976/5913, Decision No. 1977/7617 (Yargıtay 4. Hukuk Dairesi, 01.07.1997, E. 1976/5913, K. 1977/7617).

Turkish courts deciding whether a work is worthy of legal protection or not, thereby investigating the originality of the product, often refer to Hirsch. One of the latest examples is a decision by the Court of Cassation in 2023[57]:

> "*Originality of an architectural project (reflecting the owner's personality/individuality) is hidden in whether this project would have been done in the same way if it had been created by someone else. In other words, if a five-story building project, for example, was drawn by five different architects separately on the same piece of land, and all of them would draw the same project, it would not be possible to speak of a work reflecting the owner's personality and protection of a work in the sense of FSEK (Law on Intellectual and Artistic Works);* […] *If each architect drew different projects on the same area, then it would be necessary to speak of originality, that is, creative thinking that cannot be realized by everyone, and protection of a work in the sense of FSEK. In this sense, what is important is not that the work has very superior qualities, but that it is the product of an original and creative imagination (Ernst Hirsch, Intellectual Labour, İstanbul 1943, p. 12).*"

Another example is the decision ruled by the Istanbul 1st Civil Court for Intellectual and Industrial Property Rights in 2018[58]:

> "*It has been discussed whether the phrase used as the title of a poem qualifies as a 'work'. Even when the criterion is considered alone, that an intellectual and artistic product must bear the 'personality' of the creator, it is clear that if the title does not have a certain characteristic, regardless of the content of the poem, it will not be protected as a work. According to Hirsch, if the work can be created by anyone, then there can be no talk of personality in such a work. It is possible only to talk about the personality of the author in works that cannot be created by everyone.*"

These examples may be completed by two more decisions. In the decision of the Court of Cassation in 2020, the General Assembly of Criminal Cases evaluated the term of "representation of a work of art" as follows, by citing another of Hirsch's books[59]:

> "*Representation; is the presentation of a work* […] *through actions such as reading, playing, acting, and showing a work without the need for processing the work or detecting it in a fixed environment and presenting this physical copy to someone else* […]. *Therefore, the representation of the work involves presenting it to the public in a non-material way. In*

[57] General Assembly of the Court of Cassation, Date: 20.09.2023, Case No. 2022/624, Decision No. 2023/849 (Yargıtay Hukuk Genel Kurulu, 20.09.2023, E. 2022/624, K. 2023/849).

[58] Istanbul 1st Civil Court for Intellectual and Industrial Property Rights, Date: 28.06.2018, Case No. 2017/609, Decision No. 2018/276 (İstanbul 1. Fikri ve Sınai Haklar Hukuk Mahkemesi, 28.06.2018, E. 2017/609, K. 2018/276). Also, same evaluations in the decision of Court of First Instance, Ankara 1st Civil Courts for Intellectual and Industrial Property Rights, Date: 13.04.2021, Case No. 2012/58, Decision No. 2021/108 (Ankara 1. Fikri ve Sinai Haklar Hukuk Mahkemesi, 13.04.2021, E. 2012/58, K. 2021/108).

[59] Court of Cassation, General Assembly of Criminal Cases, Date: 28.01.2020, Case No. 2017/788, Decision No. 2020/34 (Yargıtay Ceza Genel Kurulu, 28.01.2020, E. 2017/788, K. 2020/34).

this case, the work is temporarily transferred to the listener and spectator to be used only once (E. Hirsch, Intellectual and Industrial Rights, Ankara Printing House, Ankara, 1948, p. 205)."

Lastly, the decision of the 11th Chamber of the Court of Cassation in 2019[60]:

"*In this respect, if an author has studied on and renewed the old work without obtaining permission from the original author, he cannot obtain economic profit from that work by means of duplicating, distributing, or similar means for economic purposes (Ernst Hirsch, Intellectual Labour, Volume II, p. 92).*"

2. Some References to Hirsch in Old Judgments

We would like to share four examples of older judicial decisions ruled before the adoption of the new Law. One of the earliest decisions referring to Hirsch dates to 1944. The interesting feature of this decision is that it does not refer to a published article by Hirsch but to his "oral lectures" at the University. The referencing of oral lectures in a court decision is an accomplishment probably very few legal professionals may claim for themselves. The relevant part of the court decision reads as follows[61]:

"[…] *Ernst Hirsch, a professor of commercial law, in his lectures at the Faculty of Law, affirmed that the jurisprudence of the Commercial Chamber of Appeal was sound, arguing that Article 704 of the Commercial Code should be considered as a general principle permitting the condition of retention of ownership and that Article 688 of the Civil Law should be considered a form of application of this provision. Therefore, the case-law of the Commercial Chamber of Appeal that Article 688 of the Civil Law is also applicable to commercial sales, is in accordance with both our legislation and commercial needs.*"

The second decision given by the Turkish Court of Cassation in 1947 reads as follows[62]:

"*Hirsch, one of the professors of Ankara Law Faculty, stated on the forty-second page of his work titled 'Commercial Law Lessons'*[63] *that the creation of works of art by artists, either personally or by employing workers or using machines, and the sale of these works are not commercial but ordinary according to the provisions of the 19th article of the (previous) Turkish Commercial Code.*"

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[60] Court of Cassation, 11th Civil Chamber, Date: 20.06.2019, Case No. 2018/2500, Decision No. 2019/3862 (Yargıtay 11. Hukuk Dairesi, 20.06.2019, E. 2018/2500, K. 2019/3862).

[61] Court of Cassation, General Assembly on the Unification of (Different) Judgments, 19 April 1944, Case No. 1943/36, Decision No. 1944 (Yargıtay İçtihadı Birleştirme Hukuk Genel Kurulu, 19.04.1994, E. 1943/36 K. 1944/14).

[62] Court of Cassation, General Assembly on the Unification of Judgments, Date: 12.11.1947, Numbers Case No. 1947/15, Decision No. 1947/22 (Yargıtay İçtihadı Birleştirme Hukuk Genel Kurulu, 12.11.1947, E. 1947/15, K. 1947/22).

[63] This citation refers to *Hirsch*, E.: Ticaret Hukuku Dersleri (Commercial Law Lessons), İstanbul 1939.

The third example illustrates his general influence on the Turkish commercial law. Prof. Dr. Ernst Hirsch was not just the drafter of 1951 Turkish Law on Intellectual and Artistic Works but also drafter of the 1956 Turkish Commercial Code. The following judicial decision of the Court of Cassation in 1974 addresses his role as follows[64]:

> "*Prof. E. Hirsch, who is known to have worked on the preparation of our new Commercial Code and to have written the government's justification, expressed his opinion in his work titled (Commercial Law Lessons) published in 1948 (p. 664) regarding Article 647, according to the Court of Cassation's precedents, even if the penalty clause is deemed excessive in commercial transactions, it cannot be reduced by the judge. Even if the creditor does not suffer any damage, the stipulated penalty clause must be fulfilled. (Code of Obligations Art. 159, paragraph 1). However, a penalty clause made in violation of the mandatory provisions of the law or included in a void contract is void. And thus, he also stated that a penalty clause that is contrary to morality and etiquette is void according to Article 20 of the Code of Obligations, which is the mandatory provision.*"

The last example—an excerpt of a decision of the Court of Cassation from 1983[65]—displays the citation of Hirsch's articles in German language even after his return to Germany.

> "*The provision of the sixth article of the Berne Convention and Union, to which our country is also a party, has deemed any kind of altering behaviour that impairs the specificity and integrity of a work of art sufficient for a claim for non-pecuniary damages/moral compensations (*[…] *Ord. Prof. Dr. Ernst E. Hirsch, Das Neue Urheberrechtsgesetz der Türkei, Schriftenreihe der UFITA, p. 51* […]*)*"

IV. Role of Prof. Dr. Ernst Hirsch in German Reform

Upon the end of World War II, the American government published a list of professors who had emigrated abroad in the January 1947 issue of the "Neue Zeitung" newspaper published in Munich, and invited these academics, including Prof. Dr. Ernst Hirsch, to return to Germany[66]. Although Prof. Hirsch initially rejected the invitation and remained in Türkiye, he moved to Germany in the following years. He was even elected rector of the Freie Universität Berlin in 1953, from which he retired in 1967[67].

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[64] General Assembly of the Court of Cassation, Date: 20.03.1974, Case No. 1970/1053, Decision No. 1974/222 (Yargıtay Hukuk Genel Kurulu, 20.03.1974, E. 1970/1053, K. 1974/222).

[65] General Assembly of the Court of Cassation, Date: 11.02.1983, Case No. 1981/70, Decision No. 1983/123 (Yargıtay Hukuk Genel Kurulu, 11.02.1983, E. 1981/70, K. 1983/123).

[66] *Hirsch*, Hâtıralarım (My Memories), p. 440.

[67] See https://www.fu-berlin.de/en/universitaet/geschichte/persoenlichkeiten/rektoren/hirsch/index.html (Last Access Date: 21 January, 2025).

During this period, Prof. Hirsch was assigned to make some arrangements in the German Copyright Law (Urheberrechtsgesetz), and for this purpose Germany requested Hirsch to translate the Law on Intellectual and Artistic Works adopted in Türkiye into German[68]. In his private letter dated May 7, 1956, to his colleague and previous assistant Dr. Yaşar Karayalçın (1923–2019), Hirsch stated that Germany was particularly interested in the Turkish modernization project and was eager to benefit from it. These sentences can be translated from Turkish into English as follows:

> "[...] *As you know, the copyright law will be amended in Germany. They asked me for translations of the Turkish Law on Intellectual and Artistic Works. They invited me to be a member of the government commission in Bonn. I accepted. Now they want more information from me. They are especially eager to learn the reasons for the project of the Turkish law. While I had the text of the Law with me, I did not have the project, the justification, and the reports of the two commissions submitted to the Turkish parliament. I wonder if you could send me the reports of the National Assembly regarding the Law on Intellectual and Artistic Works dated 5.12.1952 and numbered 5846. Maybe they are in the files at the faculty* [Ankara Law Faculty]."

Thus, the modernization of Turkish regulations partially undertaken by German scholars even helped to modernize the law of their home country. Another proof of this conclusion is Hirsch's book, named "Das neue Urheberrechtsgesetz der Türkei" (The New Copyright Law of Türkiye), written as a proposal for German law. At the end of that book, Hirsch annexed the German version of the Turkish Law. Also, in the title of that book, Hirsch preferred using a subtitle: "zugleich ein Beitrag zur Reform des deutschen Urheberrechts; mit deutsch-sprachiger Fassung des Gesetzes vom 5. Dezember 1951"[69].

On the other hand, in the preface of that book, Hirsch mentions the draft papers on German copyright reform published by the German Federal Ministry of Justice in 1954[70]. Hirsch, stating Türkiye as an example, points out that a legislator—at least in the realm of copyright law—will be influenced by both local and universal elements when making a law or reform:

> "*Copyright law is both national and international* […]. *It may be that the Turkish Law of 1951 would have turned out differently in terms of its structure, thought process, and formulation if it had been drafted by a lawyer who had grown up in French or Anglo-*

[68] See also *Şenocak*, p. 171.

[69] English: "At the Same Time, a Contribution to the Reform of German Copyright Law; with the German-language Version of the Law of December 5, 1951".

[70] In Germany, the "Gesetz über Urheberrecht und verwandte Schutzrechte (Urheberrechtsgesetz)", dated 09.09.1965, is currently in force. According to a historical study, the reform efforts of this Law actually began in 1945, the first draft (Referententwurf), that Hirsch mentioned, was created in 1954, the ministerial draft (Ministerialentwurf) was published in 1959, and the government draft (Regierungsentwurf) was completed in 1962. For details see *Hoeren*, T.: 50 Jahre Urheberrechtsgesetz – der Blick zurück in die Gesetzgebungsgeschichte, GRUR 2015, Iss. 9, pp. 825-831.

> *American legal thinking. However, its content would probably have been the same, especially with regard to the Berne Convention.*"

He continues his preface advising to choose a new path for the reform:

> "*Although I was brought up as a German lawyer in German legal thinking,* […] *I could not follow the basic conception of the German and Austrian reform legislation for scientific reasons. I was looking for a new way that would correspond better to social reality than the German reference draft of 1954* […]. *I have tried to show by analyzing the Turkish Law of 1951 that the new path I have proposed is not only theoretically justifiable, but also more practicable. This is—at least for the time being—my contribution to the reform of German copyright law. Berlin, November 1956, Ernst. E. Hirsch.*"

Hirsch's colleagues in those years have also pointed to the importance of Hirsch's aforementioned book for the German reform. Prof. Derenberg, for example, considered it very beneficial for the German reform[71]:

> "[…] *There is much in Dr. Hirsch's study which may well prove of value in the current efforts toward revision of our own out-dated copyright statute of 1909.*"

As a result of his contributions that we have focused on in this article and many others we did not mention due to the limited scope of our work, Prof. Dr. Ernst Hirsch was awarded the "Richard Strauss" medal by GEMA[72] in Germany in 1969 for his impacts on the development of international and German copyright law[73].

V. Conclusion

As a requirement of the Treaty of Lausanne in 1923, Türkiye undertook to become a party to the International Berne Convention for the Protection of Literary and Artistic Works. However, the national provisions of the existing Copyright Law of 1910, which were adopted in the last period of Ottoman Empire, were incompatible with the Berne Convention in various aspects. Therefore, there was a need for a new law complying with international rules. The efforts to adopt a new law took almost 30 years. The process was completed with the 1951 Law on Intellectual and Artistic Works No. 5846, entering into force on January 1, 1952. In the same year, Türkiye acceded to the Berne Union, which had been a pending task for Türkiye since the Treaty of Lausanne.

One of the most important figures behind this modernization process was Prof. Dr. Ernst E. Hirsch, who worked as a professor both in the Istanbul and Ankara Law Faculties between 1933 and 1952. This study primarily focused on his active

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[71] *Derenberg*, W. J.: Recent Publications in the Field of Literary, Artistic and Industrial Property, The American Journal of Comparative Law 1958, Vol. 7, Iss. 2, p. 291.

[72] Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte.

[73] *Hirsch*, Hâtıralarım (Memories), p. 434; *Krüger*, p. 150.

role in drafting the modern laws in Türkiye. In this context, it has been explained that Prof. Dr. Ernst E. Hirsch was assigned twice to prepare the draft of the abovementioned Law on Intellectual and Artistic Works. Because of his great efforts to create a modern draft, Hirsch was honored in the Turkish Grand National Assembly in a speech delivered by the famous Turkish writer and parliamentary member Halide Edip Adıvar. Although some amendments were made between 1983 and 2021, the main lines of the Law are preserved as drafted by Hirsch—and it now has been in force for 74 years.

Besides the 1951 Law on Intellectual and Artistic Works, Hirsch was also the drafter of the previous 1956 Turkish Commercial Code, applied until 2011, and the previous 1965 Trademark Law, applied until 1995. Hirsch participated in the preparatory work of an—eventually never enacted—patent law, too.

In addition to Hirsch's influence on the legislation process, this study explored the impact of his academic works. Hirsch published 40 academic works in the field of intellectual property and copyrights law in Turkish and German language. To this day, his works are cited in Turkish doctrine and judicial decisions to solve legal conflicts. To underline that Hirsch's contributions were by no means limited to the period he lived in, we listed several examples of current Turkish judicial decisions between 2018 and 2023 referencing Hirsch's publications. Since the scope of our study is limited to Hirsch's contributions to the Law of Intellectual and Artistic Works, we selected sample decisions from this field of law. On the other hand, one of the earliest decisions referring to Hirsch dates to 1944. The interesting feature of this decision is that it does not refer to a published article by Hirsch but to his "oral lectures" at the University of Istanbul.

The final part of this study pointed to the fact that—due to Hirsch's famous book "Das neue Urheberrechtsgesetz der Türkei" (The New Copyright Law of Türkiye: A Contribution to the Reform of German Copyright Law)—his previous studies in Türkiye also exerted influence on the pertaining German reform process.

Bibliography

Literature

Akipek Öcal, Şebnem/*Arslan*, Ahmet, Overcoming the Non-Acceptance of Civil Marriages in Türkiye The Biggest Problem of the Legal Reception of the Swiss Civil Code, European Review of Private Law, Vol. 32, Iss. 5, pp. 897–924, 2024.

Arslan, Ahmet, Ernst Eduard Hirschs und Eugen Ehrlichs Konzepte des „lebenden Rechts" im Lichte der Rezeption westeuropäischen Rechts in der Türkei [Ernst Eduard Hirsch's and Eugen Ehrlich's Concepts of "Living Law" in Light of the Reception of Western European Law in Türkiye], Zeitschrift für neuere Rechtsgeschichte (ZNR), Year 45, Iss. 3/4, pp. 234–258, 2023.

Ayiter, Nuşin, Hukukta Fikir ve San'at Ürünleri [Intellectual and Artistic Products in Law], Ankara 1972.

Bektaş, İbrahim, Türkiye'nin Bern Sözleşmesi'ne Katılması ve Fikir ve Sanat Eserleri Kanunu'nun Kabul Edilme Süreci [Türkiye's Accession to the Berne Convention and the Adoption Process of the Law on Intellectual and Artistic Works], Banka ve Ticaret Hukuku Dergisi [Journal of Banking and Commercial Law], Vol. 40, Iss. 2, pp. 357–382, 2024.

Beşiroğlu, Akın, Düşünce Ürünleri Üzerinde Haklar [Rights on Intellectual Property], Fikir Hukuku, Birinci Cilt–Temel Kurallar, 2nd Edition, Ankara 2002.

Bogsch, Arpad, The First Hundred Years of the Berne Convention for the Protection of Literary and Artistic Works, in The Berne Convention for the Protection of Literary and Artistic Works, pp. 11–80, Geneva 1986.

Burger, Peter, The Berne Convention: Its History and Its Key Role in the Future, Journal of Law and Technology, Vol. 3, Iss. 1, pp. 1–70, 1988.

Çakmak, Diren, Osmanlı Telif Hukuku ile İlgili Mevzuat [Legislation on Ottoman Copyright Law], Türkiyat Araştırmaları Dergisi [Journal of Turkic Studies], Iss. 21, pp. 191–234, 2007.

Derenberg, Walter Julius, Recent Publications in the Field of Literary, Artistic and Industrial Property, The American Journal of Comparative Law, Vol. 7, Iss. 2, pp. 289–308, 1958, DOI: https://doi.org/10.2307/838408.

Eskin, Şerif, Türkiye'nin Bern Sözleşmesi'ne Katılım Sürecinde Telif Haklarını Koruma Cemiyeti ve Halide Edib Adıvar [The Society for the Protection of Copyrights and Halide Edib Adıvar in Türkiye's Accession Process to the Berne Convention], Amme İdaresi Dergisi [Journal of Public Administration], Vol. 55, Iss. 3, pp. 59–87, 2022.

Geiger, Christophe, Hindert Das Urheberrecht den freien Zugang zu Wissen? Für einen angemessenen Interessenausgleich im Urheberrecht, in Symposium Book on Intellectual Property Rights from Hirsch to Present (Editors: *Oğuz*, Arzu/*Güngör*, Gülin/*Patoğlu*, Emine Mine), pp. 23–44, Ankara 2004.

Gökçek, Hasan Serat, Bern Sözleşmesi'nin Tarihsel Gelişimi, Sözleşme Korumasının İlkeleri ve Korunan Eserler ile Menfaatler [The Historical Development of the Berne Convention, The Principles of Protection, and Protected Works and Interests], Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi [Journal of Dokuz Eylül University Faculty of Law], Vol. 26, Iss. 2, pp. 1759–1807, 2024, DOI: https://doi.org/10.33717/deuhfd.1486295.

Gökyayla, Emre, Das türkische Urheberrechtsgesetz, Abs. 1–39, Internet Zeitschrift für Rechtsinformatik und Informationsrecht, 228/2003, 2003, DOI: 10.7328/jurpcb/20031810269.

Hirsch, Ernst Eduard, Ticaret Hukuku Dersleri [Commercial Law Lessons], İstanbul 1939.

Hirsch, Ernst Eduard, Türkiye'de Tercüme Hakkının Veçhi Tekâmülü [The Evolution of the Right to Translation in Türkiye], İstanbul Üniversitesi Hukuk Fakültesi Dergisi [Journal of Istanbul University Faculty of Law], Vol. V, pp. 46–62, 1939.

Hirsch, Ernst Eduard: Fikrî Eserler Hakkında Kanun Projesi [Law Project on Intellectual Works], İstanbul Üniversitesi Hukuk Fakültesi Dergisi [Journal of Istanbul University Faculty of Law], Vol. 7, Iss. 2–3, pp. 429–504, 1940.

Hirsch, Ernst Eduard, Memleketimizde Mer'i Olan Telif Hakkı Kanununun Tahlili [Analysis of the Copyright Law in Force in Our Country], İstanbul Üniversitesi Hukuk Fakültesi Dergisi [Journal of Istanbul University Faculty of Law], Vol. 6, pp. 346–500, 1940.

Hirsch, Ernst Eduard, Hukuki Bakımdan Fikri Say [Intellectual Labour from a Legal Perspective], Vol. I–II, İstanbul, 1942 and 1943.

Hirsch, Ernst Eduard, Eser Sahipliği Fikri ve Sinai Hakların Mahiyeti Hakkında Yeni Bir Görüş [A New View on the Nature of Copyright Intellectual and Industrial Rights], Ankara Üniversitesi Hukuk Fakültesi Dergisi [Journal of Ankara University Faculty of Law], Vol. 1, Iss. 3, pp. 330–342, 1944, DOI: https://doi.org/10.1501/Hukfak_0000000023.

Hirsch, Ernst Eduard, Fikri ve Sınai Haklar [Intellectual and Industrial Rights], Ankara, 1948.

Hirsch, Ernst Eduard, Bern Sözleşmesi [Berne Convention], Ankara Üniversitesi Hukuk Fakültesi Dergisi [Journal of Ankara University Faculty of Law], Vol. 7, pp. 130–145, 1950, DOI: https://doi.org/10.1501/Hukfak_0000000166.

Hirsch, Ernst Eduard, Turkish Copyright, in World Copyright, An Encyclopedia (Editors: *Pinner*, Heinz Ludwig/*Dienstag*, Paul M.), Leyden 1953.

Hirsch, Ernst Eduard, Darstellung und Übersetzung des türkischen Gesetzes über Geisteswerke und Kunstwerke, in Quellen des Urheberrechts, Gesetzestexte aller Lander mit deutschen Übersetzungen, Bd. II (Editors: *Möhring*, Philipp/*Schulze*, Erich/*Ulmer*, Eugen/*Zweigert*, Konrad), Frankfurt am Main 1961.

Hirsch, Ernst Eduard, Die Reform des türkishen Urheberrectsgesetzes, UFITA 98, pp. 83–86, Bern 1984.

Hirsch, Ernst Eduard, Hâtıralarım, Kayzer Dönemi–Weimar Cumhuriyeti–Atatürk Ülkesi [My Memories, Kaiser Era–Weimar Republic–Atatürk's Country], Ankara 1985.

Hoeren, Thomas, 50 Jahre Urheberrechtsgesetz–der Blick zurück in die Gesetzgebungsgeschichte, GRUR, Iss. 9, pp. 825–831, 2015.

Karayalçın, Yaşar, Prof. Dr. Ernst Hirş: Kişiliği–Türk Hukuku [Prof. Dr. Ernst Hirsch: His Personality and Contributions to Turkish Law], Prof. Dr. Yaşar Karayalçın'ın Üniversite ve Hukuk Hayatımızla İlgili Yayımlanmış 37 Makalesi, Özgeçmisi, Kitapları (1–77) ve Kısa Makaleleri (1–135) [Prof. Dr. Yaşar Karayalçın's 37 Published Articles, Biography, Books (1–77) and Short Articles (1–135) Regarding Our University and Legal Life], pp. 989–1002, Ankara 2012.

Krüger, Hilmar, Zum Gedenken Ernst E. Hirsch (1902–1985), Die Welt des Islams, Vol. XXIV, Iss. 1/4, pp. 141–153, 1986.

Kurt, Kadir, Bern Sözleşmesi ve Türkiye'nin Katılım Süreci [Berne Convention and Türkiye's Accession Process], Atatürk Araştırma Merkezi Dergisi [Journal of the Atatürk Research Center], Vol. 104, pp. 1–42, 2021, DOI: https://doi.org/10.33419/aamd.1015901.

Öztrak, İlhan, Fikir ve Sanat Eserleri Üzerindeki Hakların Korunması Yönünden Pozitif Hukuktaki Tarihi Gelişim [Historical Development in Positive Law in terms of Protection of Rights on Intellectual and Artistic Works], Ankara Üniversitesi Siyasal Bilgiler Fakültesi Dergisi [Journal of Ankara University Faculty of Political Sciences], Vol. XXV, Iss. 3, pp. 1–7, 1970, DOI: https://doi.org/10.1501/SBFder_0000001239.

Ricketson, Sam/*Ginsburg*, Jane, International Copyright and Neighbouring Rights–The Berne Convention and Beyond, Volume I, 3rd Edition, New York 2022.

Şenocak, Kemal, Hukuk Fakültesi'ne Alman Bilim İnsanlarının Katkıları, Prof. Dr. Ernst Eduard Hirsch [Contributions of German Scientists to the Faculty of Law, Prof. Dr. Ernst Eduard Hirsch], in İkinci Vatan ve Ankara Üniversitesi (1933–1970), Editor Prof. Dr. Kasım *Karakütük*, pp. 159–199, Ankara 2016.

Son Posta, Gazetesi, Newspaper of Son Posta on June 13, 1948, p. 3, https://www.gastearsivi.com (Last Access Date: 04 January 2025).

Tekin, Uğur, Ord. Prof. Ernst E. Hirsch'in Türk Ticaret Hukuku'nun Gelişimine Katkıları [Prof. Ernst E. Hirsch's Contributions to the Development of Turkish Commercial Law], in Eskişehir Osmangazi Üniversitesi'nin Cumhuriyetimizin 100. Yılına Armağanı, Editor: *Hekimler*, Alpay, pp. 55–68, İstanbul 2023.

Teoman, Ömer, Çeviri Hakkının Türkiye'deki Gelişimi [Development of the Right to Translation in Türkiye], in Otuz Yıl Ticaret Hukuku–Tüm Makalelerim–I, pp. 86–114, İstanbul 2000.

Topal, Cansu, Die Umsetzung der InfoSoc-Richtlinie in Deutschland und in der Türkei, Göttingen 2014.

Turan, Murat, Çağlar Boyu Düşünce Özgürlüğü: Türkiye'de ve Dünyada Telif Haklarının Tarihsel Gelişiminin Değerlendirilmesi [Freedom of Thought throughout the Ages: Evaluation of Historical Progress of Copyright in Türkiye and the World], Türk Kütüphaneciliği Dergisi [Journal of Turkish Librarianship], Vol. 30, Iss. 2, pp. 206–235, 2016.

Yılmaztekin, Hasan Kadir/*Yalçın*, Banu Eylül, Manevi Hakların Türk Telif Hukukundaki Tarihî Gelişimi [Historical Development of Moral Rights in Turkish Copyright Law], Selçuk Üniversitesi Hukuk Fakültesi Dergisi [Journal of Selçuk University Faculty of Law], Vol. 29, Iss. 3, pp. 1813–1866, 2021, DOI: https://doi.org/10.15337/suhfd.930835.

List of Selected Turkish Judicial Decisions that refer to Prof. Dr. *Ernst E. Hirsch*[74]

(1944) Court of Cassation, General Assembly on the Unification of (Different) Judgments, 19 April 1944, Case No. 1943/36, Decision No. 1944 (Yargıtay İçtihadı Birleştirme Hukuk Genel Kurulu, 19.04.1994, E. 1943/36 K. 1944/14).

(1947) Court of Cassation, General Assembly on the Unification of Judgments, Date: 12.11.1947, Numbers Case No. 1947/15, Decision No. 1947/22 (Yargıtay İçtihadı Birleştirme Hukuk Genel Kurulu, 12.11.1947, E. 1947/15, K. 1947/22).

(1974) General Assembly of the Court of Cassation, Date: 20.03.1974, Case No. 1970/1053, Decision No. 1974/222 (Yargıtay Hukuk Genel Kurulu, 20.03.1974, E. 1970/1053, K. 1974/222).

(1977) Decision of the 4th Civil Chamber of the Court of Cassation, Date: 01.07.1977, Case No. 1976/5913, Decision No. 1977/7617 (Yargıtay 4. Hukuk Dairesi, 01.07.1997, E. 1976/5913, K. 1977/7617.

(1983) General Assembly of the Court of Cassation, Date: 11.02.1983, Case No. 1981/70, Decision No. 1983/123 (Yargıtay Hukuk Genel Kurulu, 11.02.1983, E. 1981/70, K. 1983/123).

(2018) Istanbul 1st Civil Court for Intellectual and Industrial Property Rights, Date: 28.06.2018, Case No. 2017/609, Decision No. 2018/276 (İstanbul 1. Fikri ve Sınai Haklar Hukuk Mahkemesi, 28.06.2018, E. 2017/609, K. 2018/276).

(2019) Court of Cassation, 11th Civil Chamber, Date: 20.06.2019, Case No. 2018/2500, Decision No. 2019/3862 (Yargıtay 11. Hukuk Dairesi, 20.06.2019, E. 2018/2500, K. 2019/3862).

[74] All decisions are accessible in Turkish via electronic databases "https://kararara ma.yargitay.gov.tr" or "https://www.lexpera.com.tr". These decisions are briefly explained in the article under the previous heading "C- The Continuing Impact of Hirsch's Academic Works on the Implementation of the New Law in Turkish Courts".

(2020) Court of Cassation, General Assembly of Criminal Cases, Date: 28.01.2020, Case No. 2017/788, Decision No. 2020/34 (Yargıtay Ceza Genel Kurulu, 28.01.2020, E. 2017/788, K. 2020/34).

(2021) Ankara 1st Civil Courts for Intellectual and Industrial Property Rights, Date: 13.04.2021, Case No. 2012/58, Decision No. 2021/108 (Ankara 1. Fikri ve Sinai Haklar Hukuk Mahkemesi, 13.04.2021, E. 2012/58, K. 2021/108).

(2023) Decision of the General Assembly of the Court of Cassation, Date: 20.09.2023, Case No. 2022/624, Decision No. 2023/849 (Yargıtay Hukuk Genel Kurulu, 20.09.2023, E. 2022/624, K. 2023/849).